IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 2645 of 2007(M)

PETITIONER:

T.J. JOSEPH, S/O. JOSEPH,
AGED 47 YEARS, THALEPPALLY VEEDU, P.O. PUTHUSSERY,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.K.V.PAVITHRAN

RESPONDENTS:

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1. SECRETARY,
THAVINGAL GRAMA PANCHAYATH, P.O. THAVINGAL,
MANANTHAVADY, WAYANAD DISTRICT.

2. TAHSILDAR,
MANANTHAVADY, WAYANAD DISTRICT.

3. STATE OF KERALA,
REPRESENTED BY SECRETARY, REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

R1 BY ADV. SRI.P.RAMAKRISHNAN
R2 & R3 BY GOVT. PLEADER SRI. K.J. MOHAMMED ANZAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.2645 of 2007

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Dated this the 28th day of May, 2007

JUDGMENT

The prayer in the writ petition is to issue writ of certiorari or any other writ or order directing the 1st respondent to release the EMD, Security deposit and pay for the work carried out by the petitioner and to command the respondents to release the petitioner from the contract by taking possession of the materials collected by him without waiting for the settlement of disputes between respondents 1 and 2. Case of the petitioner is that petitioner was entrusted with the work of collection, stacking and keeping the sand from two kadavus. According to him he has collected a portion of the material and stacked at the appropriate place, it is stated. Petitioner complains that the first respondent is not making payment sticking to the condition that payment can be made only after auction sale.

2. Statement is filed by the counsel for the first respondent. A statement is filed by the Government Pleader also. In the statement filed by counsel for the first respondent it is stated as follows:

> "The petitioner had on 31.10.2006 informed the

Panchayat that the sand collected has been transferred to Nirmithi Kendra. On examination, the Panchayat had found about 40 tractor loads of sand.

The Panchayat, on enquiry, had found that the petitioner had extracted 30 tractor loads from Asharikadavu and 10 tractor load from Orappukadavu before 30.10.2006. The said load of sand is not now available either at the Kadavu or any other place.

The petitioner had remitted a total amount of Rs.30925/- as deposit. But the cost of 40 tractor load he had extracted would come to Rs.40,000/-."

3. I would think that in the nature of the prayers sought, which arise out of the contract, the statement would show that the case of the petitioner can be treated as one which is a disputed question of fact. In such circumstances, I would think that it may not be open to the petitioner to seek remedy under Article 226 of the Constitution.

Writ petition fails for the said reason and it is dismissed. However, I make it clear that the petitioner can work out his remedies in the appropriate forum.

sb. (K.M. JOSEPH, JUDGE)